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SENATE BILL 6235

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State of Washington

60th Legislature

2008 Regular Session

By Senators Haugen and Keiser

Read first time 01/14/08. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to public works procurement; amending RCW  
2 39.04.010, 39.04.190, 39.30.020, 53.08.120, 53.12.130, and 53.12.172;  
3 reenacting and amending RCW 39.04.155; adding a new section to chapter  
4 53.12 RCW; and repealing RCW 53.12.175.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 39.04.010 and 2007 c 133 s 1 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Award" means the formal decision by the state or municipality  
11 notifying a responsible bidder with the lowest responsive bid of the  
12 ((state)) state's or municipality's acceptance of the bid and intent to  
13 enter into a contract with the bidder.

14 (2) "Contract" means a contract in writing for the execution of  
15 public work for a fixed or determinable amount duly awarded after  
16 advertisement and competitive bid, or a contract awarded under the  
17 small works roster process in RCW 39.04.155.

18 (3) "Municipality" means every city, county, town, district, or  
19 other public agency authorized by law to require the execution of

1 public work, except drainage districts, diking districts, diking and  
2 drainage improvement districts, drainage improvement districts, diking  
3 improvement districts, consolidated diking and drainage improvement  
4 districts, consolidated drainage improvement districts, consolidated  
5 diking improvement districts, irrigation districts, or other districts  
6 authorized by law for the reclamation or development of waste or  
7 undeveloped lands.

8 (4) "Public work" means all consulting, architectural, engineering,  
9 or other services, as well as all work, construction, alteration,  
10 repair, or improvement other than ordinary maintenance, executed at the  
11 cost of the state or of any municipality, or which is by law a lien or  
12 charge on any property therein. All public works, including  
13 maintenance when performed by contract shall comply with chapter 39.12  
14 RCW. "Public work" does not include work, construction, alteration,  
15 repair, or improvement performed under contracts entered into under RCW  
16 36.102.060(4) or under development agreements entered into under RCW  
17 36.102.060(7) or leases entered into under RCW 36.102.060(8).

18 (5) "Responsible bidder" means a contractor who meets the criteria  
19 in RCW 39.04.350.

20 (6) "State" means the state of Washington and all departments,  
21 supervisors, commissioners, and agencies of the state.

22 **Sec. 2.** RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and  
23 2007 c 133 s 4 are each reenacted and amended to read as follows:

24 (1) This section provides uniform small works roster provisions to  
25 award contracts for construction, building, renovation, remodeling,  
26 alteration, repair, or improvement of real property that may be used by  
27 state agencies and by any local government that is expressly authorized  
28 to use these provisions. These provisions may be used in lieu of other  
29 procedures to award contracts for such work with an estimated cost of  
30 two hundred thousand dollars or less. The small works roster process  
31 includes the limited public works process authorized under subsection  
32 (3) of this section and any local government authorized to award  
33 contracts using the small works roster process under this section may  
34 award contracts using the limited public works process under subsection  
35 (3) of this section.

36 (2)(a) A state agency or authorized local government may create a  
37 single general small works roster, or may create a small works roster

1 for different specialties or categories of anticipated work. Where  
2 applicable, small works rosters may make distinctions between  
3 contractors based upon different geographic areas served by the  
4 contractor. The small works roster or rosters shall consist of all  
5 responsible contractors who have requested to be on the list, and where  
6 required by law are properly licensed or registered to perform such  
7 work in this state. A state agency or local government establishing a  
8 small works roster or rosters may require eligible contractors desiring  
9 to be placed on a roster or rosters to keep current records of any  
10 applicable licenses, certifications, registrations, bonding, insurance,  
11 or other appropriate matters on file with the state agency or local  
12 government as a condition of being placed on a roster or rosters. At  
13 least once a year, the state agency or local government shall publish  
14 in a newspaper of general circulation within the jurisdiction a notice  
15 of the existence of the roster or rosters and solicit the names of  
16 contractors for such roster or rosters. In addition, responsible  
17 contractors shall be added to an appropriate roster or rosters at any  
18 time they submit a written request and necessary records. Master  
19 contracts may be required to be signed that become effective when a  
20 specific award is made using a small works roster.

21 (b) A state agency establishing a small works roster or rosters  
22 shall adopt rules implementing this subsection. A local government  
23 establishing a small works roster or rosters shall adopt an ordinance  
24 or resolution implementing this subsection. Procedures included in  
25 rules adopted by the department of general administration in  
26 implementing this subsection must be included in any rules providing  
27 for a small works roster or rosters that is adopted by another state  
28 agency, if the authority for that state agency to engage in these  
29 activities has been delegated to it by the department of general  
30 administration under chapter 43.19 RCW. An interlocal contract or  
31 agreement between two or more state agencies or local governments  
32 establishing a small works roster or rosters to be used by the parties  
33 to the agreement or contract must clearly identify the lead entity that  
34 is responsible for implementing the provisions of this subsection.

35 (c) Procedures shall be established for securing telephone,  
36 written, or electronic quotations from contractors on the appropriate  
37 small works roster to assure that a competitive price is established  
38 and to award contracts to the lowest responsible bidder as defined in

1 RCW 39.04.010. Invitations for quotations shall include an estimate of  
2 the scope and nature of the work to be performed as well as materials  
3 and equipment to be furnished. However, detailed plans and  
4 specifications need not be included in the invitation. This subsection  
5 does not eliminate other requirements for architectural or engineering  
6 approvals as to quality and compliance with building codes. Quotations  
7 may be invited from all appropriate contractors on the appropriate  
8 small works roster. As an alternative, quotations may be invited from  
9 at least five contractors on the appropriate small works roster who  
10 have indicated the capability of performing the kind of work being  
11 contracted, in a manner that will equitably distribute the opportunity  
12 among the contractors on the appropriate roster. However, if the  
13 estimated cost of the work is from one hundred thousand dollars to two  
14 hundred thousand dollars, a state agency or local government(~~(, other~~  
15 ~~than a port district,)) that chooses to solicit bids from less than all  
16 the appropriate contractors on the appropriate small works roster must  
17 also notify the remaining contractors on the appropriate small works  
18 roster that quotations on the work are being sought. The government  
19 has the sole option of determining whether this notice to the remaining  
20 contractors is made by: (i) Publishing notice in a legal newspaper in  
21 general circulation in the area where the work is to be done; (ii)  
22 mailing a notice to these contractors; or (iii) sending a notice to  
23 these contractors by facsimile or other electronic means. For purposes  
24 of this subsection (2)(c), "equitably distribute" means that a state  
25 agency or local government soliciting bids may not favor certain  
26 contractors on the appropriate small works roster over other  
27 contractors on the appropriate small works roster who perform similar  
28 services.~~

29 (d) A contract awarded from a small works roster under this section  
30 need not be advertised.

31 (e) Immediately after an award is made, the bid quotations obtained  
32 shall be recorded, open to public inspection, and available by  
33 telephone inquiry.

34 (3) In lieu of awarding contracts under subsection (2) of this  
35 section, a state agency or authorized local government may award a  
36 contract for work, construction, alteration, repair, or improvement  
37 projects estimated to cost less than thirty-five thousand dollars using  
38 the limited public works process provided under this subsection.

1 Public works projects awarded under this subsection are exempt from the  
2 other requirements of the small works roster process provided under  
3 subsection (2) of this section and are exempt from the requirement that  
4 contracts be awarded after advertisement as provided under RCW  
5 39.04.010.

6 For limited public works projects, a state agency or authorized  
7 local government shall solicit electronic or written quotations from a  
8 minimum of three contractors from the appropriate small works roster  
9 and shall award the contract to the lowest responsible bidder as  
10 defined under RCW 39.04.010. After an award is made, the quotations  
11 shall be open to public inspection and available by electronic request.  
12 A state agency or authorized local government shall attempt to  
13 distribute opportunities for limited public works projects equitably  
14 among contractors willing to perform in the geographic area of the  
15 work. A state agency or authorized local government shall maintain a  
16 list of the contractors contacted and the contracts awarded during the  
17 previous twenty-four months under the limited public works process,  
18 including the name of the contractor, the contractor's registration  
19 number, the amount of the contract, a brief description of the type of  
20 work performed, and the date the contract was awarded. For limited  
21 public works projects, a state agency or authorized local government  
22 may waive the payment and performance bond requirements of chapter  
23 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby  
24 assuming the liability for the contractor's nonpayment of laborers,  
25 mechanics, subcontractors, material suppliers, suppliers, and taxes  
26 imposed under Title 82 RCW that may be due from the contractor for the  
27 limited public works project, however the state agency or authorized  
28 local government shall have the right of recovery against the  
29 contractor for any payments made on the contractor's behalf.

30 (4) The breaking of any project into units or accomplishing any  
31 projects by phases is prohibited if it is done for the purpose of  
32 avoiding the maximum dollar amount of a contract that may be let using  
33 the small works roster process or limited public works process.

34 (5)(a) A state agency or authorized local government may use the  
35 limited public works process of subsection (3) of this section to  
36 solicit and award small works roster contracts to small businesses that  
37 are registered contractors with gross revenues under one million  
38 dollars annually as reported on their federal tax return.

1 (b) A state agency or authorized local government may adopt  
2 additional procedures to encourage small businesses that are registered  
3 contractors with gross revenues under two hundred fifty thousand  
4 dollars annually as reported on their federal tax returns to submit  
5 quotations or bids on small works roster contracts.

6 (6) As used in this section, "state agency" means the department of  
7 general administration, the state parks and recreation commission, the  
8 department of natural resources, the department of fish and wildlife,  
9 the department of transportation, any institution of higher education  
10 as defined under RCW 28B.10.016, and any other state agency delegated  
11 authority by the department of general administration to engage in  
12 construction, building, renovation, remodeling, alteration,  
13 improvement, or repair activities.

14 **Sec. 3.** RCW 39.04.190 and 1993 c 198 s 2 are each amended to read  
15 as follows:

16 (1) This section provides a uniform process to award contracts for  
17 the purchase of any materials, equipment, supplies, consulting  
18 services, or other services by those municipalities, including port  
19 districts, that are authorized to use this process in lieu of the  
20 requirements for formal sealed bidding. The state statutes governing  
21 a specific type of municipality shall establish the maximum dollar  
22 thresholds of the contracts that can be awarded under this process, and  
23 may include other matters concerning the awarding of contracts for  
24 purchases, for the municipality.

25 (2) At least twice per year, the municipality shall publish in a  
26 newspaper of general circulation within the jurisdiction a notice of  
27 the existence of vendor lists and solicit the names of vendors for the  
28 lists. Municipalities shall by resolution establish a procedure for  
29 securing telephone or written quotations, or both, from at least three  
30 different vendors whenever possible to assure that a competitive price  
31 is established and for awarding the contracts for the purchase of any  
32 materials, equipment, supplies, consulting services, or other services  
33 to the lowest responsible bidder as defined in RCW 43.19.1911.  
34 Immediately after the award is made, the bid quotations obtained shall  
35 be recorded, open to public inspection, and shall be available by  
36 telephone inquiry. A contract awarded pursuant to this section need  
37 not be advertised.

1       **Sec. 4.** RCW 39.30.020 and 1974 ex.s. c 74 s 1 are each amended to  
2 read as follows:

3       In addition to any other remedies or penalties contained in any  
4 law, municipal charter, ordinance, resolution, or other enactment, any  
5 municipal officer by or through whom or under whose supervision, in  
6 whole or in part, any contract is made in willful and intentional  
7 violation of any law, municipal charter, ordinance, resolution, or  
8 other enactment requiring competitive bidding, including consulting,  
9 architectural, engineering, or other services, upon such contract shall  
10 be held liable to a civil penalty of not less than three hundred  
11 dollars and may be held liable, jointly and severally with any other  
12 such municipal officer, for all consequential damages to the municipal  
13 corporation. If, as a result of a criminal action, the violation is  
14 found to have been intentional, the municipal officer shall immediately  
15 forfeit his office. For purposes of this section, "municipal officer"  
16 (~~shall~~) means an "officer" or "municipal officer" as those terms are  
17 defined in RCW 42.23.020(2).

18       **Sec. 5.** RCW 53.08.120 and 2000 c 138 s 210 are each amended to  
19 read as follows:

20       All material required by a port district may be procured in the  
21 open market or by contract and all work ordered, including consulting  
22 and other services but not architectural and engineering services, may  
23 be done by contract or day labor. All such contracts for work, the  
24 estimated cost of which exceeds two hundred thousand dollars, shall be  
25 let at public bidding upon notice published in a newspaper of general  
26 circulation in the district at least thirteen days before the last date  
27 upon which bids will be received, calling for sealed bids upon the  
28 work, plans and specifications for which shall then be on file in the  
29 office of the commission for public inspection. The same notice may  
30 call for bids on such work or material based upon plans and  
31 specifications submitted by the bidder. The competitive bidding  
32 requirements for purchases or public works may be waived pursuant to  
33 RCW 39.04.280 if an exemption contained within that section applies to  
34 the purchase or public work.

35       However, a port district may let contracts using the small works  
36 roster process under RCW 39.04.155 in lieu of calling for sealed bids.

1 Whenever possible, the managing official shall invite at least one  
2 proposal from a minority contractor who shall otherwise qualify under  
3 this section.

4 When awarding such a contract for work, when utilizing proposals  
5 from the small works roster, the managing official shall give weight to  
6 the contractor submitting the lowest and best proposal, and whenever it  
7 would not violate the public interest, such contracts shall be  
8 distributed equally among contractors, including minority contractors,  
9 on the small works roster.

10 **Sec. 6.** RCW 53.12.130 and 1994 c 223 s 88 are each amended to read  
11 as follows:

12 Two additional port commissioners shall be elected at the next  
13 district general election following the election at which voters  
14 authorized the increase in port commissioners to five members.

15 The port commissioners shall divide the port district into five  
16 commissioner districts prior to the first day of June in the year in  
17 which the two additional commissioners shall be elected, unless the  
18 voters approved the nomination of the two additional commissioners from  
19 district-wide commissioner districts as permitted in RCW 53.12.010(2).  
20 The new commissioner districts shall be numbered one through five and  
21 the three incumbent commissioners shall represent commissioner  
22 districts one through three. If, as a result of redrawing the district  
23 boundaries two or three of the incumbent commissioners reside in one of  
24 the new commissioner districts, the commissioners who reside in the  
25 same commissioner district shall determine by lot which of the first  
26 three numbered commissioner districts they shall represent for the  
27 remainder of their respective terms. A primary shall be held to  
28 nominate candidates from districts four and five where necessary and  
29 commissioners shall be elected from commissioner districts four and  
30 five at the general election. The persons elected as commissioners  
31 from commissioner districts four and five shall take office immediately  
32 after qualification as defined under RCW (~~(29.01.135)~~) 29A.04.133.

33 (~~(In a port district where commissioners are elected to four-year~~  
34 ~~terms of office,)~~) The additional commissioner thus elected receiving  
35 the highest number of votes shall be elected to a four-year term of  
36 office and the other additional commissioner thus elected shall be  
37 elected to a term of office of two years, if the election is held in an

1 odd-numbered year, or the additional commissioner thus elected  
2 receiving the highest number of votes shall be elected to a term of  
3 office of three years and the other shall be elected to a term of  
4 office of one year, if the election is held in an even-numbered year.  
5 (~~In a port district where the commissioners are elected to six year~~  
6 ~~terms of office, the additional commissioner thus elected receiving the~~  
7 ~~highest number of votes shall be elected to a six year term of office~~  
8 ~~and the other additional commissioner shall be elected to a four year~~  
9 ~~term of office, if the election is held in an odd numbered year, or the~~  
10 ~~additional commissioner receiving the highest number of votes shall be~~  
11 ~~elected to a term of office of five years and the other shall be~~  
12 ~~elected to a three year term of office, if the election is held in an~~  
13 ~~even numbered year.)) The length of terms of office shall be computed  
14 from the first day of January in the year following this election.~~

15 Successor commissioners from districts four and five shall be  
16 elected to terms of (~~either six or~~) four years(~~(, depending on the~~  
17 ~~length of terms of office to which commissioners of that port district~~  
18 ~~are elected))).~~

19 **Sec. 7.** RCW 53.12.172 and 1994 c 223 s 85 are each amended to read  
20 as follows:

21 (1) In every port district the term of office of each port  
22 commissioner shall be four years (~~in each port district that is~~  
23 ~~county wide with a population of one hundred thousand or more, or~~  
24 ~~either six or four years in all other port districts as provided in RCW~~  
25 ~~53.12.175,)) and until a successor is elected and qualified and assumes  
26 office in accordance with RCW (~~29.04.170~~) 29A.20.040.~~

27 (2) The initial port commissioners shall be elected at the same  
28 election as when the ballot proposition is submitted to voters  
29 authorizing the creation of the port district. If the port district is  
30 created the persons elected at this election shall serve as the initial  
31 port commission. No primary shall be held. The person receiving the  
32 greatest number of votes for commissioner from each commissioner  
33 district shall be elected as the commissioner of that district.

34 (3) The terms of office of the initial port commissioners shall be  
35 staggered as follows (~~in a port district that is county wide with a~~  
36 ~~population of one hundred thousand or more)): (a) The two persons who~~  
37 are elected receiving the two greatest numbers of votes shall be

1 elected to four-year terms of office if the election is held in an odd-  
2 numbered year, or three-year terms of office if the election is held in  
3 an even-numbered year, and shall hold office until successors are  
4 elected and qualified and assume office in accordance with RCW  
5 ((29.04.170)) 29A.20.040; and (b) the other person who is elected shall  
6 be elected to a two-year term of office if the election is held in an  
7 odd-numbered year, or a one-year term of office if the election is held  
8 in an even-numbered year, and shall hold office until a successor is  
9 elected and qualified and assumes office in accordance with RCW  
10 ((29.04.170)) 29A.20.040.

11 (4) ~~((The terms of office of the initial port commissioners in all  
12 other port districts shall be staggered as follows: (a) The person who  
13 is elected receiving the greatest number of votes shall be elected to  
14 a six year term of office if the election is held in an odd numbered  
15 year or to a five year term of office if the election is held in an  
16 even numbered year, and shall hold office until a successor is elected  
17 and qualified and assumes office in accordance with RCW 29.04.170; (b)  
18 the person who is elected receiving the next greatest number of votes  
19 shall be elected to a four year term of office if the election is held  
20 in an odd numbered year or to a three year term of office if the  
21 election is held in an even numbered year, and shall hold office until  
22 a successor is elected and qualified and assumes office in accordance  
23 with RCW 29.04.170; and (c) the other person who is elected shall be  
24 elected to a two year term of office if the election is held in an odd-  
25 numbered year or a one year term of office if the election is held in  
26 an even numbered year, and shall hold office until a successor is  
27 elected and qualified and assumes office in accordance with RCW  
28 29.04.170.~~

29 (5)) The initial port commissioners shall take office immediately  
30 after being elected and qualified, but the length of their terms shall  
31 be calculated from the first day in January in the year following their  
32 elections.

33 NEW SECTION. **Sec. 8.** A new section is added to chapter 53.12 RCW  
34 to read as follows:

35 Employees of port districts may not waive established port district  
36 policies related to competition in the procurement of goods and

1 services without notifying or seeking the approval of the district's  
2 elected commission.

3 NEW SECTION. **Sec. 9.** RCW 53.12.175 (Reducing port commissioner  
4 terms--Ballot proposition) and 1994 c 223 s 89 & 1992 c 146 s 3 are  
5 each repealed.

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